

(a) [at least one] neutral [lipid] lipids [at] in an amount ranging [equal to] from about 3% to about 50% by weight total lipid in said composition, wherein at least a portion of said neutral lipids are triglycerides, and

(b) at least one phospholipid.

*B1 cont*  
Claim 2 (amended)

The protein and peptide free composition of claim 1, wherein said neutral [lipid] lipids further comprise [is a triglyceride] at least one monoglyceride or at least one diglyceride.

Claim 4 (amended)

*B2*  
The protein and peptide free composition of claim 1 wherein said [at least one] neutral [lipid] lipids further comprise cholesteryl ester.

REMARKS

Entry of the amendment is requested, whereby claims 1-5 will remain before the examiner.

Claim 1 is amended to require at least a portion of the neutral lipids to be triglycerides. See, e.g., page 24, lines 2-3 ("or triglyceride"), for support, as well as the specific examples, which include various amounts of triglyceride. As to the amendment of claim 2, refer, e.g., to page 24, line 4, as well as page 25, lines 5-6 and page 26, lines 20-22 of the

specification, all of which provide the required antecedent support for the amendment. Claim 4 is amended so that its language parallels the language of the parent claim.

The examiner has rejected claims 1-5 over "Facts and Comparisons", "Guo" and "Hope". The examiner alleges that the claims are *prima facie* obvious because they differ from the art only in the recitation of their intended use. Applicants have reviewed the references carefully and have considered the examiner's position. They disagree, for reasons which are now set forth.

Implicit in the examiner's argumentation is an admission that neither of the Guo and Hope patents contains even a single mention of triglycerides. This implicit admission is accurate, and it renders the references absolutely irrelevant to what is claimed, because even if there were a suggestion to combine these, there would still be no triglyceride present in any resulting combination. As the claims require triglyceride, the patents alone are insufficient.

"Facts and Comparisons" does not change this. The excerpt deals with "intravenous fat emulsion", such as "Nutrilipid 10%", "Soyacol 10%", and "Nutrilipid 20%". Without question, these supplements contain triglycerides. Please note the discussion at page 14, however, because where such compositions are concerned, there is a way to correlate the given percentage to weight percent. A 10% emulsion contains 89% by weight of triglycerides.

Hence, the formulations within "Facts and Comparisons" are well outside of what is claimed.

It is also pointed out that while intended use may be of no merit in examined claims, it is highly relevant to a proposed combination of references to support a rejection under 35 U.S.C. §103. To this end, "Facts and Comparisons" deals with food supplements. Guo deals with formulations to treat dry eyes, and Hope deals with drug delivery. These are three rather disparate bodies of literature. Would the artisan of ordinary skill in high caloric food supplements look to dry eye formulations for inspiration? Clearly not. Thus, any combination of "Facts and Comparisons" with either reference is clearly out of the ambit of what is permissible under 35 U.S.C. §103. As such, the rejection should be withdrawn.

It is believed that this application is now in condition for allowance, and a holding to that end is urged.

The examiner is invited to telephone the undersigned should she feel that issues remain which might be addressed via a telephone interview.

Respectfully submitted,

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